

ATTACHMENT 1.

Resolution No. 6523

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A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AND THE CITY CLERK TO ATTEST AN AGREEMENT BETWEEN THE CITY OF SCOTTSDALE AND ASUF SCOTTSDALE, L.L.C. (CITY OF SCOTTSDALE AGREEMENT NO. 2004-121-COS) FOR THE ACQUISITION OF CERTAIN REAL PROPERTY; APPROVING THE NOMINATION OF THE CITY OF SCOTTSDALE MUNICIPAL PROPERTY CORPORATION AS THE NOMINEE/BUYER UNDER THAT AGREEMENT; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Scottsdale (the "City") desires to acquire certain real property (the "Property") located in the City (generally at the southeast corner of McDowell Road and Scottsdale Road and formerly known as the "Los Arcos Mall" site) as the site for development of the ASU Scottsdale Center for New Technology and Innovation (the "Center"); and

WHEREAS, ASUF Scottsdale, L.L.C. ("ASUF"), an Arizona limited liability corporation and an affiliate of the ASU Foundation, has entered into an agreement with the current owner (Los Arcos Development, L.L.C.) to purchase the Property on certain terms and conditions and subject to certain time limitations specified in that agreement; and

WHEREAS, ASUF has agreed, immediately upon acquisition of the Property from its current owner, to sell the Property to the City or its nominee and to simultaneously enter into a ground lease for a substantial portion of the Property to facilitate development of the Center; and

WHEREAS, the City of Scottsdale Municipal Property Corporation (the "MPC") was formed to assist and has assisted, the City in financing various capital acquisitions and improvements; and

WHEREAS, the MPC has agreed to purchase the Property as nominee of the City and to issue its excise tax revenue bonds in an amount sufficient to acquire the Property; and

WHEREAS, the MPC has agreed that, upon its acquisition of the Property, it will sell the Property to the City in consideration of the City's agreement to pay to the MPC amounts required to pay debt service on the MPC's bonds when due and for other consideration as specified in proposed City of Scottsdale Agreement No. 2004-120-COS; and

WHEREAS, upon acquisition of the Property by the City from the MPC, the City intends to lease a portion of the Property to ASUF for development of the Center as provided in proposed City of Scottsdale Agreement No. 2004-119-COS;

WHEREAS, it appears to be in the best interests of the City to proceed with the nomination of the MPC and the acquisition and lease of the Property as provided; and

WHEREAS, in furtherance of the intent and purpose of this Resolution, there has been prepared a Real Estate Purchase Agreement, in substantially the form attached hereto as Exhibit "A," to be entered into between the City and ASUF (the "Purchase Agreement"); and

WHEREAS, the immediate operation of the provisions of this ordinance is necessary for the preservation of the public peace, health and safety, an EMERGENCY is hereby declared to exist, and this ordinance shall be in full force and effect from and after its passage by the Council as required by the City Charter;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SCOTTSDALE, ARIZONA AS FOLLOWS:

Section 1. The City approves the acquisition of the Property pursuant to the Purchase Agreement and the nomination of the MPC as the "Buyer" under the Purchase Agreement. Upon acquisition of the Property by the MPC, it is the intent of the City to immediately purchase the Property from the MPC pursuant to a separate agreement between the City and the MPC, and then to lease portions of the Property to ASUF, pursuant to a separate Ground Lease Agreement between the City and ASUF, to facilitate development of the Center.

Section 2. The terms and provisions contained in the Purchase Agreement are hereby approved; and the Mayor and Clerk of the City are hereby authorized to execute and attest, respectively, the Purchase Agreement and/or to execute and attest any nomination form or similar instrument required to designate the MPC as "Buyer" under the Purchase Agreement.

Section 3. The Mayor of the City, the City Clerk, and the City Treasurer and the Financial Services General Manager are each hereby authorized and directed to execute any and all further documents and to take any and all actions that may be necessary or desirable in consummating the transactions contemplated in this Resolution and in the Purchase Agreement. Any documents specifically approved in this Resolution shall be substantially in the form presented to the Council, with such additions, deletions and modifications as shall be approved by those persons approving, executing and delivering the same on behalf of the City.

Section 4. It is necessary to utilize an emergency clause with this Resolution (i) because the opportunity to purchase the Property pursuant to the Purchase Agreement is subject to certain time constraints and closing requirements imposed by ASUF (and imposed, in turn, upon ASUF by the current owner of the Property) which are outside the control of the City and the City would be unable to take advantage of this opportunity to acquire the Property on the terms and conditions set

forth in the Purchase Agreement absent immediate, effective action; and (ii) to enable the MPC to proceed with the issuance and sale of its bonds, effective as soon as possible, thereby committing the purchaser of the bonds to the interest rates on the bonds, transferring the risk of changes and prevailing market interest rates from the City and the MPC to the purchaser of the bonds, and permitting delivery of and payment for the bonds to occur as soon as possible. The immediate operation of the provisions of this Resolution are therefore necessary for the preservation of the public peace, health and safety of the City. Accordingly, an emergency is hereby declared to exist and this Resolution shall be in full force and effect from and after its passage and approval by the Council of the City, and is hereby exempt from any referendum provisions of the Constitution and laws of the State of Arizona and the City Charter.

PASSED, ADOPTED AND APPROVED by the Council of the City of Scottsdale this 6th day of July, 2004.

ATTEST:

CITY OF SCOTTSDALE, an Arizona
municipal corporation

By: _____
Carolyn Jagger, City Clerk

By: _____
Mary Manross, Mayor

APPROVED AS TO FORM:

By: Joseph R. Bertoldo
Joseph R. Bertoldo, City Attorney